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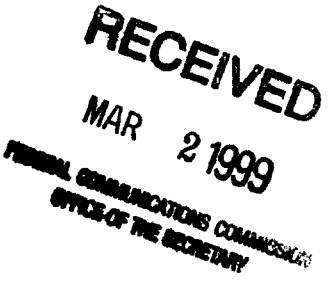
March 2, 1999



BY HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S. W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in CC Docket No. 96-98 (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Ms. Salas:

Please include the attached letters, with a set of enclosures, in the record of the referenced proceeding.

I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for CompTel

Enclosures

No. of Copies rec'd 0+2
List ABCDE

COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Carol Ann Bischoff
Executive Vice President
and General Counsel
cbischoff@comptel.org

March 2, 1999

BY HAND DELIVERY

Jake E. Jennings
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Enclosed Materials Regarding Local Competition

Dear Jake:

I would like to thank you and the other staff of the Policy Division for spending time last week meeting with me and Linda Oliver and with Jerry James, CompTel's Chairman and Executive Vice President of Thriftycall/Golden Harbor, and Foster McDonald, President, ITC Deltacom. We hope that these CompTel members were able to provide you with useful information about the difficulties they have had in obtaining interconnection, network elements, and resale from the ILECs in their service areas.

I hope that the FCC staff will feel free to call me with any further questions you might have. CompTel would be glad to make its members available to cover any topics that the FCC would like to understand better. As an industry association representing a wide range of competitive service providers, CompTel and its members are especially well-equipped to provide the FCC with a broad picture of the progress of local competition, from the point of view of both large and small carriers.

1900 M Street, N.W. • Suite 800 • Washington, D.C. 20036-3508 • Phone: (202) 296-6650 • Fax: (202) 296-7585

I also would like to take this opportunity to provide the Commission with three additional documents, each of which is relevant to the issues we discussed with you last week. These items, which are illustrative of the problems CompTel's members are facing, are attached to this letter and are briefly described below:

1. Uncertainty about Validity of Interconnection Agreements. Letter from John C. Peterson, Director, Wholesale Contract Compliance, GTE Network Services, to Harold E. Lovelady, Golden Harbor of Texas, Inc., dated February 16, 1999. In this letter, GTE declares the unbundled network element (UNE) provisions of its interconnection agreement with Golden Harbor to be "nullified" in light of the Supreme Court's decision in AT&T Corp. v. Iowa Utilities Board, No. 97-826, 1999 U.S. LEXIS 903 (1999). Letter at 1-2. GTE then goes on to offer to "agree to maintain the status quo" until new UNE rules are implemented by the FCC, but only if Golden Harbor "agrees not to seek UNE 'platforms,' or 'already bundled' combinations of UNEs." Id. at 2. This position appears to be contrary to GTE's representation to the FCC that it "will continue to make available each of the individual network elements defined in the now-vacated FCC rules and our existing interconnection agreements" during the FCC's remand proceeding. 1/ This position also violates the FCC's rule, upheld by the Supreme Court, which prohibits ILECs from breaking apart combinations of network elements. 47 C.F.R. § 51.315(b).

2. Lack of Availability of Network Element Combinations. Letter from Bell Atlantic-New York (BA-NY) to the Hon. Debra Renner, Acting Secretary, New York State Public Service Commission, February 19, 1999, in Cases 98-C-0690, et al. In this letter, which responds to MCI/WorldCom's challenge to restrictions on UNE combinations contained in Bell Atlantic's UNE tariff in New York, BA-NY declares that "[u]ntil a revised set of elements is determined by the FCC on remand, *there is no UNE combination requirement under the FCC's rules.*" Letter at 8 (emphasis added). Thus, although BA-NY has agreed to "continue to make available

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1/ Letter from William P. Barr, Executive Vice President and General Counsel, GTE Corporation, to Lawrence Strickling, Chief, FCC Common Carrier Bureau, February 12, 1999. A copy of this letter is attached.

each of the individual network elements defined in the now vacated-FCC rules" during the pendency of the Supreme Court remand proceeding, 2/ BA-NY continues to insist on its right to break apart those elements, in violation of the FCC's valid and effective Rule 315(b).

3. Difficulties in Obtaining Access to Collocation. Transcript from Workshop on Collocation, February 12, 1999, Texas Public Utility Commission Project No. 16251 (Southwestern Bell Telephone Company (SWBT) Section 271 case). The purpose of this Texas PUC workshop was "to discuss time frames, policies and methods and procedures for ordering, engineering, procuring and provisioning of collocation." Tr. at 3. The transcript reveals that competitors continue to experience numerous problems in obtaining collocation from SWBT. These problems include, for example:

- Delays in obtaining collocation quotes from SWBT, due in part to SWBT's policy of aggregating CLEC requests. (Tr. at 42, 49, 53-55, 122). Covad, for example, was told it would not receive a price quote until the year 2000. (Tr. at 37). The ALJ noted her belief that the tariff did not permit SWBT to aggregate CLEC requests for this purpose. (Tr. at 64).

- Lack of a full up-front screening process, staffing issues, and lack of communication with CLECs regarding prioritization, all of which cause delays in processing collocation requests. (Tr. at 105-108, 119, 150, 60, 62, 68).

- SWBT's failure to provide specific information regarding reservation of central office space for its own use. (Tr. at 129-139, 143-45, 362-66).

2/ Letter from Edward D. Young, III, Sr. Vice President and General Counsel, Bell Atlantic, to Lawrence Strickling, Chief, FCC Common Carrier Bureau, February 8, 1999. A copy of this letter is attached.

Please let me know if you would like additional copies of the enclosed documents. Please also do not hesitate to call me if you have any questions. Thanks again for meeting with us.

Sincerely yours,

Carol Ann Bischoff/LHO

Carol Ann Bischoff

Enclosures

cc (w/enclosures): Magalie Salas, Secretary
cc (w/o enclosures): Jonathan Reel
Daniel Shiman
David Kirschner
Claudia Fox
Andrea Kearney

COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Carol Ann Bischoff
Executive Vice President
and General Counsel
cbischoff@comptel.org

March 2, 1999

BY HAND DELIVERY

Thomas Power
Legal Advisor to
Chairman William E. Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Enclosed Materials Regarding Local Competition

Dear Tom:

I would like to thank you for spending time last week meeting with me and Linda Oliver and with Jerry James, CompTel's Chairman and Executive Vice President of Thriftycall/Golden Harbor, and Foster McDonald, President, ITC Deltacom. We hope that these CompTel members were able to provide you with useful information about the difficulties they have had in obtaining interconnection, network elements, and resale from the ILECs in their service areas.

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Please do not hesitate to call me if you have any questions. Thanks again for meeting with us.

Sincerely yours,

Carol Ann Bischoff/LW

Carol Ann Bischoff

Enclosures

cc: Magalie Salas, Secretary

GTE Network Services
600 Hidden Ridge
HQE03D52
Irving, TX 75038

February 16, 1999

Harold E. Lovelady
Golden Harbor of Texas Inc.
401 Carlson Circle
San Marcos, TX 78666

VIA CERTIFIED MAIL

Dear Harold E. Lovelady:

Subject: **UNBUNDLED NETWORK ELEMENTS AND PRICING REQUIREMENTS**

Our records indicate that there is an interconnection agreement ("Agreement")* between your firm for the state of TX and GTE Southwest Incorporated, a Delaware corporation and Contel of Texas, Inc., a Texas corporation (GTE), part of which provides for the provision of unbundled network elements. This letter provides notice of a recent development in the law.

On January 25, 1999, the Supreme Court of the United States issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with

* The Agreement is not in agreement in the generally accepted understanding of that term. GTE was required to accept the Agreement which was required to reflect the then-effective FCC rules.

the Act. As a result, any provisions in the Agreement requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Agreement does *not* reflect the Court's decision, and any provision in the Agreement that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming the Agreement now to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending the Agreement (or incorporating the impact of the decision into the Agreement) and agree to maintain the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Agreement until the FCC issues the New Rules even though it is not legally obligated to do so.

2. Likewise, Golden Harbor of Texas Inc. agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.

3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Agreement, GTE will agree to extend to any new interconnection arrangement between the parties the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable

and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.

5. GTE's proposal to maintain the status quo applies only to the UNE pricing, unbundling, and UNE platform issues. There may be other terms in an existing agreement (e.g., quality service standards) that GTE or a requesting carrier may want to renegotiate or arbitrate pursuant to their agreements and applicable law.

In sum, GTE's proposal as described above would maintain the status quo until the legal landscape is settled. Any questions related to this proposal should be referred to me via e-mail at john.peterson@telops.gte.com.

Sincerely,

John C. Peterson
Director – Wholesale Contract Compliance
GTE Network Services

EX PARTE OR LATE FILED

William P. Barr
Executive Vice President
Government & Regulatory Advocacy,
General Counsel

GTE Corporation

1850 M Street NW
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202 463-5210
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w.barr@hq.gte.com

February 12, 1999

CC Docket 96

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: GTE's Network Element Offerings

Dear Larry:

As you requested, this letter confirms that, during the FCC proceeding on remand from the Supreme Court, GTE will continue to make available each of the individual network elements defined in the now-vacated FCC rules and our existing interconnection agreements.

Of course, GTE also will continue to negotiate in good faith over new interconnection agreements consistent with the terms of the Act.

Sincerely,

William P. Barr

WPB/dh

Bell Atlantic – Legal Department
1095 Avenue of the Americas
New York, NY 10036
37th Floor
Tel 212 395-6509
Fax 212 768-7569

Joseph A. Post
Regulatory Counsel

February 19, 1999

Honorable Debra Renner
Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Cases 98-C-0690, 95-C-0657, 94-C-0095, and 91-C-1174 (Response to MCI WorldCom's Objections to January 26, 1999 Tariff Filing)

Dear Ms. Renner:

On July 23, 1998, Bell Atlantic – New York ("BA-NY", or the "Company") filed tariff amendments to implement various provisions of the Company's Prefiling Statement. On January 11, 1999, based on the extensive comments that had been filed by numerous interested parties, the Commission issued an order suspending the new tariff provisions and directing the Company to amend them in certain respects.[1] Pursuant to the Order, additional amendments were filed on January 26, 1999, and still others were filed on February 10, 1999, based on subsequent discussions with Staff. As set forth in the Order, these provisions went into effect on February 15, 1999, with the exception of a small number of tariff pages that have been postponed to allow the Commission to consider them at its March 16, 1999, Public Session. The postponed pages include

certain amendments relating to "EEL" (Expanded Extended Link), to "CLOSE" (Collocation Line-of-Sight Escort), and to the UNE Platform.

By letter dated February 11, 1999, MCI WorldCom has challenged certain provisions of the January 26 tariff filing. To the extent that these provisions have already gone into effect, MCI's objections are moot. Nevertheless, we respond to them here; partly because some of the comments relate to the postponed pages; and partly to refute MCI's position that these tariffs are unlawful and to make it clear that no further tariff amendments should be ordered by the Commission.

I. PROVISIONING INTERVALS FOR INTEROFFICE TRUNKS

MCI argues that the Order requires further amendments to Tariff P.S.C. No. 914, §§ 3.3.1(B) and 3.3.2(C), to make it clear that the trunk provisioning intervals set forth in those sections do not depend on the availability of facilities. MCI, however, misreads the relevant section of the Order, which is quoted below:

> BA-NY's tariff is generally consistent with the intervals contained in the Prefiling Statement for interconnection trunks. However, the commenters are correct that certain restrictions contained in the tariff go beyond the language of the Prefiling Statement. Particularly significant is the restriction on the availability of the standard interval to those cases where facilities are available. *This provision ignores a primary reason for requiring the CLECs to forecast their demand - to allow BA-NY to augment its facilities as necessary to meet that forecasted demand.* BA-NY is directed to remove this language from its tariff.[2]

[1] Cases 98-C-0690, *et al.*, "Order Suspending Tariff Amendments and Directing Revisions" (issued and effective January 11, 1999) (the "Order").

[2] Order at 17 (emphasis supplied).

This language makes it clear that in the Commission's view the relinquishment of a "no facilities available" defense — and the Company's resulting greater vulnerability to "market rate adjustments" under the Prefiling Statement — is linked to the CLEC's obligation to provide forecasts. In other words, the Commission regarded it as reasonable to impose on BA-NY the obligation to have facilities available to meet *forecasted* demand. The two tariff sections cited by MCI, however, are outside the scope of that principle, in that they deal with situations where the Company is being asked to meet *unforecasted* demand — *i.e.*, the CLEC either did not submit a demand forecast or else submitted an inaccurate one.[3] Section 3.3.1(B), for example, deals with "Non-Forecasted or Over-Forecasted by 10% Trunks" and § 3.3.2(C) applies to "orders or portions of orders beyond 110% of a current forecast amount where there are no trunk port facilities available". Thus, it is clear that the Commission did not intend to require the Company to remove from these two sections the references to the availability of facilities.

MCI also objects to tariff language that purportedly "continues to tie CLEC forecasts received at least six months in advance to trunking intervals". The Order did in fact direct BA-NY to remove "restriction[s] on the CLECs' ability to update their forecasts"[4] The tariff complies with this direction.

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[3] It is irrelevant in this context whether the inaccuracy was "unforeseeable" or was the result of poor forecasting by the CLEC. Where demand cannot be foreseen by the CLEC, *a fortiori* it cannot be foreseen by BA-NY, and it is reasonable to impose the risk of inaccurate forecasting on the party — the CLEC — that is in the best position to forecast the results of its own marketing activities.

[4] Order at 17.

The tariff amendments filed in July 1998 stated that CLECs could update their forecasts once every six months.[5] The revised language, filed on January 26, 1999, states that:

> Upon receipt of a valid forecast, the CLEC may update this document once every month. However, these forecasts are to be provided with a minimum of six-months notice before they qualify for installation intervals for trunks that have been previously forecasted.[6]

This language is consistent with the Order, which requires BA-NY to permit forecast updates while also allowing a six-month interval between the submission of the revised forecast and the onset of its impact on the Company's provisioning obligations:

> The restriction on the CLECs' ability to update their forecasts is also unwarranted. *Updates received at least six months prior to actual orders would not be treated as forecasts for the purposes of the intervals or market rate adjustments contained in the Prefiling.* However, it is beneficial to both BA-NY and the CLEC to have the most accurate interconnection demand information possible, and CLECs should not be discouraged from providing this information to BA-NY as soon as they become aware of it. Therefore, that restriction must be removed from the tariff.[7]

The Commission's approach is reasonable since it encourages CLECs to update their forecasts while refusing to impose an unfair obligation on the Company to have facilities available shortly after a forecast is filed. Imposing such an obligation would be inconsistent with the basic purpose of requiring forecasts — *i.e.*, to give the Company a fair chance to gear up to meet forecasted changes in demand.

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[5] Tariff P.S.C. No. 914, § 3.1.2, 3rd Revised Page 1.

[6] Tariff P.S.C. No. 914, § 3.1.2, 4th Revised Page 1.

[7] Order at 17 (emphasis supplied).

The remaining sections cited by MCI do not refer either to the six-month interval or to the permitted one-month updates, and to the extent that they refer to forecasts, they would be governed by the general provisions of § 3.1.2 discussed above.

II. NON-RECURRING CHARGES

Pursuant to the Commission's direction, the January 26 filing implemented a "sliding scale" non-recurring cancellation charge in order to tie the amount of the charge to the amount of provisioning work that would have been performed as of the time of cancellation. The revised scheme is set forth in great detail in the amendments to Tariff P.S.C. No. 914, § 3.2.3. Specifically, § 3.2.3(C)(1) defines three "critical dates"; identifies the provisioning work that would normally be accomplished by those dates; and defines the application of two specific non-recurring charges, the Service Charge and the CO Wiring Charge, based upon whether the work associated with those charges would, or would not, have been performed if an order is cancelled before, or after, each of the critical dates. (The rate levels for the charges are defined elsewhere on the basis of cost studies submitted in Case 95-C-0657.) The scheme is simple in concept, clearly explained in the tariff, easily administrable by BA-NY and the CLEC, and cost-reflective.

MCI's objection that BA-NY "does not indicate in these provisions, what work is actually being performed by BA-NY and paid for by the CLEC" either reflects a failure to read the tariff or is simply mischievous. The tariff explains, for example, that "the Service charge is incurred at the issuance of the order, which is coincident with the [Scheduled Issued Date, one of the three 'critical dates']. The CLEC Central Office Wiring Charge is incurred at translation, wiring and testing, which are coincident with the

[Wired and Office Tested Date]."[8] Details about the specific work functions whose costs are recovered by the two non-recurring charges was set forth in detail in the Company's filings in Case 95-C-0657.[9]

Finally, MCI objects to § 3.2.3(E) of Tariff P.S.C. No. 914 and § 5.11(E)(4) of Tariff P.S.C. No. 916, which purportedly were "unilaterally inserted" by BA-NY in order to enable it "to miss an interval by at least 30 days before a CLEC can cancel an order without incurring cancellation charges". The tariff provisions referred to by MCI were present in the 914 and 916 tariffs long prior to the tariff filing of January 26, 1999 and even the one of July 23, 1998.[10] Thus, MCI's objections amount to either extremely late comments on quite old tariff filings, or else to extremely untimely petitions for reconsideration of the Commission orders allowing such filings to go into effect. In either case, they should be rejected summarily on the grounds of untimeliness. Moreover, MCI simply ignores the fact that these provisions did not restrict a pre-existing right to cancel an order without incurring cancellation charges; rather, they limited the application of that charge (which was added to the tariffs at the same time as the exception was). In short, the 30-day provision benefits CLECs rather than prejudicing their rights.

The 30-day provision represents a reasonable accommodation of the interests of BA-NY and CLECs, and there is no basis for requiring it to be modified.

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[8] Tariff P.S.C. No. 914, § 3.2.3(C)(2).

[9] Both of these charges were considered in Phase 2 of that proceeding.

[10] The provisions were included in the original versions of the 914 and 916 tariffs, filed in October 1995 and May 1997, respectively.

III. UNE COMBINATIONS

Finally, MCI objects to various tariff provisions relating to two UNE combinations, EEL and the UNE Platform. The Commission has received extensive comments on these restrictions, which generally mirror the terms of the Prefiling Statement. The only new argument that MCI now offers is that the restrictions violate the 1996 Act as interpreted in the Supreme Court's recent decision in *AT&T Corp.* v. *Iowa Utilities Board.* These arguments are without foundation, and are based on an account of the Supreme Court's decision that is incomplete, at best.

FCC Rule 319 ("Specific Unbundling Requirements") required ILECs to provide access to a specified set of UNEs "on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service".[11] In *AT&T Corp.* v. *Iowa Public Utilities Board*, the Supreme Court invalidated Rule 319[12] on the grounds that in identifying the UNEs to be unbundled by ILECs, the FCC had not adequately considered whether "access to such network elements as are proprietary in nature is necessary" and "whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer", as required by § 251(d)(1) of the 1996 Act:

> Section 251(d)(2) does not authorize the Commission to create isolated exemptions from some underlying duty to make all network elements available. It requires the Commission to determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the "necessary" and "impair" requirements. The latter

[11] 47 C.F.R. § 51.319.

[12] *See* slip op. at 20-25.

> is not achieved by disregarding entirely the availability of elements outside the network, and by regarding *any* "increased cost or decreased service quality" as establishing a "necessity" and an "impair[ment]" of the ability to "provide ... services."[13]

The issue of which elements must be unbundled as network elements was remanded to the FCC for determination in light of these considerations. On remand, the FCC will have to apply the "necessity" and "impairment" tests in light of (among other criteria) what network elements are available to CLECs outside of the ILEC network. Thus, "elements" that are available from other sources, including elements that competitors can provide themselves, arguably do not have to be provided on an unbundled basis.

Until a revised set of elements is determined by the FCC on remand, there is no UNE combination requirement under the FCC's rules. The link between combination requirements and the FCC's UNE unbundling requirements is clear. Logically, UNE combination requirements cannot be imposed until it is determined exactly what UNEs are available to be combined. This fact was implicitly recognized by the Supreme Court in stating that certain concerns raised by ILECs concerning the FCC's combination requirements may be rendered "academic" in light of the remand of Rule 319.[14]

Also relevant is the Court's disposition of FCC Rule 315, related to element combinations. Rule 315(b) prohibited ILECs, except on request, from "separat[ing] requested network elements that the incumbent LEC currently combines". This Rule refers to element combinations, such as the UNE Platform, that already exist in the

[13] *Id.* at 24 (emphasis in original).

[14] *Id.* at 26.

incumbent's network. Rule 315(c), in contrast, required ILECs, upon request, to "perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is: (1) technically feasible; and (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network."

Both Rules 315(b) and 315(c) were vacated by the Eighth Circuit, the first in that court's original opinion in July 1997, the second in the opinion on reconsideration issued in October 1997. The vacatur of Rule 315(c) was not challenged by any party to the Supreme Court decision, and accordingly that aspect of the Eighth Circuit's judgment stands. (This fact is not mentioned in MCI's letter.) The vacatur of Rule 315(b), on the other hand, was challenged and was reversed by the Supreme Court, on the grounds that the Rule represented a reasonable interpretation of the Act's unbundling requirements.[15] Thus, it is important to understand that the combined effect of the Eighth Circuit's and Supreme Court's judgments is to reinstate the requirement that ILECs provide existing combinations, but to vacate the requirement that they confect *new* combinations at a CLEC's request.

In light of the Supreme Court's disposition of Rules 315 and 319, there are currently *no* UNE combination requirements in effect. As the Court recognized, any combination obligation is "academic" in light of the fact that there is no FCC rule in

[15] Slip op. at 26-27.

effect delineating the constituent elements.[16] Even if this were not the case, any obligation to provide EEL would be precluded by the unchallenged vacatur of Rule 315(c), since EEL is not a "pre-existing" combination. Accordingly, the only relevant requirements in effect at this time are the voluntary commitments set forth in the Company's tariffs and in its Prefiling Statement. The issue before the Commission at this time is the same as the issue that was before it in July 1998 — whether the tariffs filed by the Company faithfully implement the terms of the Prefiling Statement. All of MCI's arguments on this point have been, or should have been, interposed in the comment cycle established by the Commission for the July 23 filing.

* * *

For the reasons set forth above, MCI's objections to the Company's January 26 tariff filing should be rejected by the Commission.

Respectfully submitted,

Joseph Post

cc: Active Parties
Honorable Eleanor Stein
Mr. Daniel Martin
Mr. Jeffrey Hoagg

[16] BA-NY has committed to the FCC to continue to provide previously defined elements during the pendency of the FCC's proceedings on remand. This *voluntary* commitment, however, does not change the fact that there is no ***legally-imposed*** combination requirement at this time. Furthermore, it is BA-NY's view that the "necessity" and "impairment" standard defined by the Supreme Court will require substantial alterations in Rule 319 on remand.

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Edward D. Young III
Sr. Vice President and Deputy General Counsel

February 8, 1999

Mr. Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Bell Atlantic's Network Element Offerings

Dear Larry:

As you requested, this letter confirms that, during the FCC proceeding on remand from the Supreme Court, Bell Atlantic will continue to make available each of the individual network elements defined in the now-vacated FCC rules and our existing interconnection agreements.

Of course, Bell Atlantic also will continue to negotiate in good faith over new interconnection agreements consistent with the terms of the Act.

Sincerely,

Edward D. Young, III